

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
To: The Commission		

REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to Comments filed in response to the November 19, 2012 Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-referenced docket.¹ WISPA concurs with the many commenters who lament the *FNPRM*’s focus on manufacturing additional mechanisms to funnel funding to price cap carriers, instead of promoting the prompt provision of competitively neutral consumer broadband service in unserved areas. WISPA concurs with those commenters who oppose modifications to the Connect America Fund (“CAF”) rules that would afford price cap carriers “a second bite” at Phase I funding, and disagrees with those commenters who assert that the generous Phase I subsidies offered to price cap carriers to date were somehow overly restrictive. WISPA agrees with commenters who believe that the best use of the remaining Phase I funding would be to place it in the Remote Areas Fund (“RAF”), where it would be guaranteed to benefit consumers

¹ *Connect America Fund*, Further Notice of Proposed Rulemaking, FCC 12-138, WC Docket No. 10-90 (rel. Nov. 19, 2012) (“*FNPRM*”). Following publication of the *FNPRM* in the Federal Register, the Wireline Competition Bureau (“Bureau”) released a Public Notice stating that the deadline for filing initial Comments in response to the *FNPRM* would be January 28, 2013, with reply comments due February 11, 2013. See Public Notice, *Comment Cycle Established for Commission’s Further Notice of Proposed Rulemaking Regarding Modifications to Connect America Phase I*, DA 13-4 (rel. Jan. 2, 2013). Accordingly, WISPA’s Reply Comments are timely filed.

who are most in need. WISPA also agrees with those commenters who urge the Commission not to change, mid-course, the definition of unserved areas. Lastly, WISPA concurs with commenters who assert that any “limited challenges” to the accuracy of the National Broadband Map (“NBM”) should occur only *after* price cap carriers have identified areas where they are requesting Phase I funding.

Discussion

I. The Commission Should Return to the Principle of Competitive Neutrality and Refocus on the Task at Hand: Getting Service to Consumers Promptly.

As numerous commenters point out, the *FNPRM* “perpetuate[s] the same flawed structure”² in place during initial Phase I funding, and rests on the same faulty assumption “that ILECs are uniquely positioned to deliver broadband services to currently underserved communities.”³ Despite the fact that the very “genesis”⁴ of the *FNPRM*’s proposals stems from the stark reality “that incumbent price cap carriers have left on the table more than 60 percent of CAF Phase I funding allocated to them,”⁵ the *FNPRM* nevertheless focuses, with little consideration of other alternatives, on “preserving ILECs’ preferential access to billions of dollars in annual funding.”⁶ Clearly, the continued propagation of the same skewed policies that led to the need for the *FNPRM* is not an appropriate route. As one commenter aptly stated: “the Commission can do better.”⁷

² Comments of ViaSat, Inc., WC Docket No. 10-90 (Jan. 28, 2013) at 1 (“ViaSat Comments”).

³ Comments of Competitive Carriers Association, WC Docket No. 10-90 (Jan. 28, 2013) at 6 (“CCA Comments”).

⁴ Comments of United States Cellular Corporation, WC Docket No. 10-90 (Jan. 28, 2013) at 4 (“U.S. Cellular Comments”).

⁵ *Id.*

⁶ *Id.* at 5.

⁷ *Id.* at 3.

The Commission should refocus on “the actual goal of universal service support: providing service to *consumers*.”⁸ This means abandoning unwarranted favoritism toward a small group of ILECs and returning to the principle of competitive neutrality that has, until now, been at the core of USF. Given the Commission’s Phase I experience to date, in which “numerous price-cap carriers turn[ed] their backs on this no-interest federal funding,”⁹ it should be manifestly obvious that opening CAF Phase I funding opportunities to other broadband providers is the most efficient way to address the goal of Phase I: the rapid expansion of broadband service to those areas that are presently unserved.

A few commenters attempt to present the price cap carriers as victims of an initial Phase I program that was somehow “overly restrictive”¹⁰ so that it was “difficult for many price cap carriers to accept some or all of their allocated support.”¹¹ Their proposed “solution” is, not surprisingly, to throw more and more money at the ILECs in the form of greatly expanded per-household buildout subsidies, funding for second-mile projects, and unequivocal grants of various waivers sought by price cap carriers to allow for funding mechanisms that deviate wildly from the initial terms of CAF Phase I support.¹² These arguments are particularly unavailing. In designing the initial Phase I program, the Commission bent over backwards to channel funding to price cap carriers under the very rules the carriers themselves proposed. WISPA completely agrees that now, given the experience to date with Phase I allocations, “the appropriate response to price cap carriers’ widespread refusal to accept \$775 per line in build out subsidies is not to

⁸ Comments of National Cable & Telecommunications Association, WC Docket No. 10-90 (Jan. 28, 2013) at 1 (emphasis in original) (“NCTA Comments”).

⁹ Comments of Southeast Association of Telecommunications Officers and Advisors, WC Docket No. 10-90 (Jan. 28, 2013) at 6.

¹⁰ Comments of Alaska Communications Systems, WC Docket No. 10-90 (Jan. 28, 2013) at 1 (“ACS Comments”).

¹¹ Comments of the United States Telecom Association, the Independent Telephone & Telecommunications Alliance, and the ABC Coalition, WC Docket No. 10-90 (Jan. 28, 2013) at 6 (“USTA Comments”).

¹² See ViaSat Comments at 6 (noting that ILECs “have been able to treat the CAF program rules as an invitation to ‘negotiate’ with the Commission by declining funding and/or filing waiver requests.”).

water down performance requirement or to shove additional funds towards ILECs in the hope they will expand their networks.”¹³ Instead, the Commission should learn from the miscalculations of the Phase I program, acknowledge that Phase I has generally “fail[ed] to extend broadband service to unserved households in an expedient and cost-effective manner,”¹⁴ and act so that the remainder of the Phase I funding is put to better use ensuring the buildout of broadband service by parties that, unlike many of the ILECs, are ready to deliver *now* on the promise of providing broadband to those areas most in need.

II. “Leftover” Phase I Funds Should Go Into the Remote Areas Fund, Where They Will Benefit Consumers Who Are Most in Need.

WISPA wholeheartedly endorses the proposal of ViaSat, Inc. to “divert remaining Phase I funding to the Remote Areas Fund, so that it can be used for the benefit of the consumers most in need of immediate support.”¹⁵ ViaSat is absolutely correct that the households that will be served by the Remote Areas Fund are those “*most* in need of support, and *least* likely to receive broadband service absent such support,”¹⁶ and that, under the fundamental principle of universal service, those households should be prioritized for funding. The Commission should rest assured that even the \$775 per line funding level for Phase I – snubbed by some ILECs as “insufficient”¹⁷ – will provide a significant, if not complete, offset, to the cost of establishing WISP-provided broadband service for a household in a high-cost remote area. WISPA has

¹³ CCA Comments at 5.

¹⁴ ViaSat Comments at 6.

¹⁵ *Id.* at 10; *see also* Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90 (Jan. 28, 2013) at 3-4 (“WISPA Comments”).

¹⁶ ViaSat Comments at 9

¹⁷ ACS Comments at 2.

previously recommended on several occasions that the FCC apply the declined Phase I funds to the Remote Areas Fund, a viable option completely ignored by the *FNPRM*.¹⁸

III. The Commission Should Not Alter, Mid-Course, the Definition of Unserved Areas.

WISPA agrees with the many commenters who oppose the Commission's proposal to expand the definition of unserved areas to include those locations that are already *served* by internet connectivity of up to 4 Mbps downstream and 1 Mbps upstream. This proposal is entirely misplaced in light of the millions of Americans who still have *no* access to broadband service – let alone service at DSL-level and greater speeds – and given the Commission's initial emphasis on CAF Phase I as a mechanism for ensuring broadband deployment in areas that are “unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream.”¹⁹ This proposal is clearly an attempt to greatly and unnecessarily expand the universe of existing subscribers for which price cap carriers could pursue more Phase I subsidies. Its adoption would be fundamentally unfair to those millions of consumers for whom the goal of Phase I still has not been met, or even initiated. Furthermore, it would be fundamentally unfair to those unsubsidized broadband providers (including WISPs) who have, absent the generous governmental support enjoyed by the price cap carriers, invested in facilities that provide connectivity ranging from the 768/200 kbps Phase I baseline standard up to the 4/1 Mbps level now proposed in the *FNPRM*. These providers have reasonably relied on the Commission's

¹⁸ See WISPA Comments at 3. U.S. Cellular notes that it, too, has urged the Commission to consider alternative options for use of the remaining Phase I funding, but that the Commission has refused even to seek comment on these proposals, thus “reflect[ing] the Commission's apparent willingness to continue to depart from its principles of competitive and technological neutrality.” U.S. Cellular Comments at 17.

¹⁹ U.S. Cellular Comments at 7, quoting *Universal Service Reform – Mobility Fund, Report and Order*, 26 FCC Rcd. 17663, 17720 (2011).

assurances that it would not fund competitors in the unsubsidized areas where these providers already provide service.

IV. The “Limited Challenge Process” Should Proceed Only After Carriers Have Elected the Areas They Intend to Serve, and Under a Meaningful Evidentiary Standard.

WISPA concurs with commenters who believe that any “limited challenge” process to NBM coverage claims should commence only after price cap carriers have identified the census blocks that they propose to serve with Phase I subsidies. It is absolutely correct that “[i]f the challenge process is invoked prematurely – that is, before price cap carriers have determined where they likely would use CAF I Incremental Support to deploy broadband service – the industry and the Commission will be compelled to expend time and resources to make determinations that ultimately may have no impact on how and where CAF Phase I funds are utilized.”²⁰ WISPA supports this commonsensical limitation on the challenge process.²¹

WISPA also agrees that a successful challenge to claimed NBM coverage must require more than “[v]ague accusations without concrete proof.”²² Clearly, “entities attempting to claim that the National Broadband Map overstate broadband availability [should be required] to provide sufficient evidence to support such a claim.”²³ Thus, WISPA believes that the Commission’s proposed “more probable than not” standard should be elevated, and that the NBM should be altered only upon presentation of “clear and convincing” evidence.

²⁰ USTA et al. Comments at 17.

²¹ The USTA Commenters continue to make unsupported claims about the alleged service quality of fixed wireless broadband service. *See* USTA Comments at 15-16. Such conjecture and innuendo are not only outside the scope of this proceeding, but totally false as well, and gain no credence by their repetition.

²² NCTA Comments at 9.

²³ *Id.*

Conclusion

For the foregoing reasons, WISPA urges the Commission not to afford price cap carriers a “second bite” at Phase I funding, but rather, to place remaining Phase I funding into the Remote Areas Fund, where it will be put to use providing service to those most in need. Furthermore, WISPA urges the Commission not to change, mid-course, the definition of unserved area. Lastly, WISPA encourages adoption of a meaningful NBM challenge process that will proceed only upon selection by price cap carriers of those areas where they will use Phase I subsidies.

Respectfully submitted,

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WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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